



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 23, 2023

IN THE MATTER OF:

Appeal Board No. 626915

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective June 25, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed November 21, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statements submitted by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed part time as a bookkeeper by the employer retail hardware store for nearly 17 years. The claimant worked Mondays through Fridays, about 25-30 hours a week, depending on the work that needed to be done. Since the start of the pandemic in March 2020, the claimant had been working from home most of the time, paying the employer's bills online, checking and reconciling the employer's bank account statements, and preparing the company's payroll each week.

Prior to June 20, 2022, the claimant had been having difficulty trying to

correct an ongoing sales tax error, which she was not able to fix, and which was compounding the longer it took to rectify. The claimant spoke to one of the owners (GG) about the problem multiple times, asking him to hire an accountant to help her solve the problem. The employer often used a family friend who was an accountant when needed, but he was not returning the claimant's calls. On a number of occasions, GG authorized the claimant to make appointments with outside accountants, then instructed her to call and cancel the appointments she had made.

At the end of the day on June 20, 2022, after spending hours and hours trying to remedy the sales tax problem, the claimant again spoke with GG about the ongoing, which was getting worse, and again told him that she needed the help of an accountant. When GG did not offer a response, the claimant told GG that if the employer did not hire an accountant to help her, she was going to have to do something. The claimant did not know what she was going to do, and was even considering hiring an accountant on her own. The claimant did not indicate to GG what she was going to do, and did not mention any date by which she hoped the employer would provide her with the help of an accountant to fix the employer's ongoing sales tax error.

On Thursday, June 23, 2022, the claimant created the employer's payroll from home online. On Saturday, June 25, GG faxed the claimant the usual "end of day" closeout information for her to enter into the computer; he did the same on Monday, June 27 and Tuesday, June 28. On Monday, June 27 and Tuesday June 28, the claimant did her usual work for the employer from home online, including checking the employer's bank statements for discrepancies and reconciling the payroll bank account. At some point early that week, the claimant learned that her fax machine was not working, and placed calls to the service center to get it fixed after her own attempts to get it back online failed.

On Wednesday, June 29, the claimant prepared the employer's payroll, including the correct deduction of taxes, and communicated with the bank to have money transferred to the payroll account. Later that night, the claimant received notification that the payroll had already been processed, although deductions for taxes had not been made. The claimant was unsure who had processed the payroll, since it was her job to do.

On July 2, 2022, the claimant called the employer to find out what was going on. She left two messages, and at the end of the day, GG's co-owner, CC,

returned her call. The claimant asked CC who had done the duplicate payroll, and asked if everything was okay; CC responded that it was not, and that according to GG, the claimant had quit. The claimant told CC that she had not quit, but had only asked once again for the help of an accountant to correct the employer's ongoing sales tax error, and that there must be a misunderstanding. CC responded that there was no way to work things out, that the employer had already hired someone else to do the claimant's job, and that the claimant could file for unemployment.

OPINION: The credible evidence fails to establish that the claimant voluntarily separated from her employment. We find that the claimant's words and actions on June 20, 2022 and thereafter do not establish an intent to voluntarily quit her job.

We are more persuaded by the claimant's account of what she said to GG in their conversation on June 20, 2022, than by GG's version of that conversation. Specifically, we credit the claimant's testimony that she told GG that if he did not get an accountant to help her figure out the employer's sales tax error she was "going to have to do something;" over GG's testimony that the claimant said she was going to quit if the employer did not hire an accountant by June 24, 2022.

We find it significant that the claimant continued to perform her regular job responsibilities for the employer up to and after June 24, and until July 2, 2022 when CC told her that the employer had hired someone to replace her. We also note with significance that GG continued to send the claimant work to do after June 24. Whether or not the claimant received the work sent to her by GG due to a malfunctioning fax machine is not material; it is material that GG's conduct of continuing to give work to the claimant is inconsistent with his contention that the claimant quit on June 24 because he had not hired an accountant by that date.

Further, we are convinced that the claimant did not know what she was going to do when she told

GG on June 20 that she was going to "have to do something," and that her statement was a comment made in frustration with the employer's continuing unwillingness to get her the help she needed. We note the claimant's credible testimony that she was even considering hiring an accountant on her own to help her solve the problem. Whether the claimant had the authority to hire

someone to help her is not relevant. What is relevant is that such was the conduct the claimant was considering when she said she was going to have to "do something," not that she was going to quit a job where she had worked for nearly 17 years.

The claimant's actions of continuing to perform her duties as a bookkeeper after June 24, 2022, and until she was told she had been replaced, do not demonstrate an intent to resign, and are inconsistent with a voluntary separation. Accordingly, we find that the claimant's separation from employment was not voluntary, and we conclude that the initial determination disqualifying the claimant on the basis that she voluntarily quit without good cause, should be overruled.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective June 25, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER